

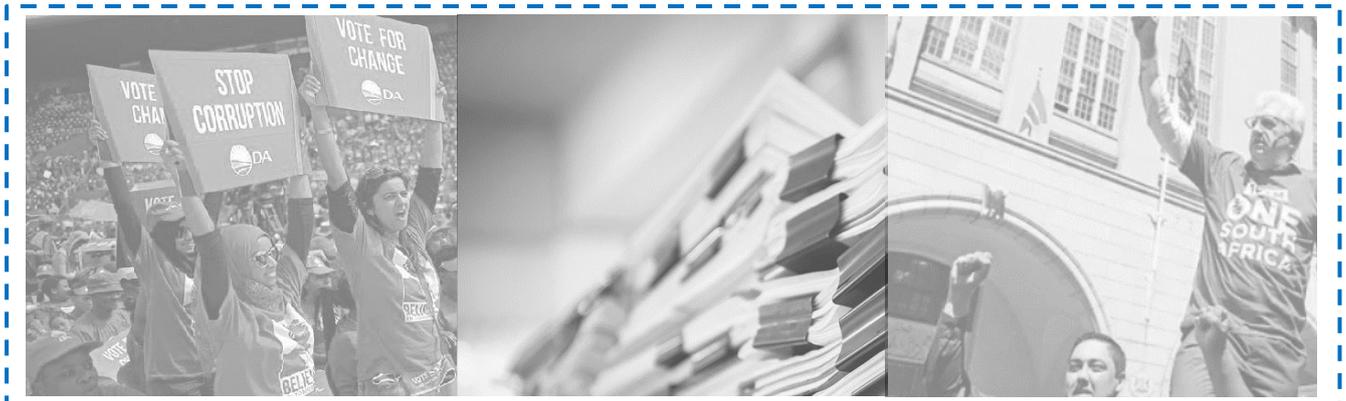


## **Coalition Country:**

*DA's Private Member's Bills to stabilise coalitions  
ahead of 2024*

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## Introduction

The purpose of this document is to provide a pathway to assist future national coalition governments with governance and have legislative checks and balances in place ahead of the 2024 national elections.

It is clear that the ANC support continues to collapse, and we would find ourselves with a national coalition government in 2024.

If the current state of coalitions was to filter up to national and provincial governments post 2024, then the stability of coalitions becomes crucial. The last thing South Africans need is a country that is deliberately made ungovernable by the ANC as it battles to retain support across the country.

The objectives of this document are to set out the issues currently faced by coalitions and provide solutions to ensure that ahead of 2024, when the ANC drops below 50% of the national vote, a stable coalition government can be formed which will be firewalled against some of the issues facing current coalition governments. These do include small parties who are prepared to swing support based on positions and not on principles. These decisions to switch are often based on the promise of patronage and not in the interests of the voters.

An unstable national or provincial government could have devastating effects for the economy and the country as a whole. This is why we need to use the lessons learnt at a local government level and fix some of the legislative lacuna that exists.

With all of this in mind, the DA has a **5-point action plan** to ensure stable coalitions beyond 2024:

These **5 points** will be implemented through the introduction of two separate **Private Members Bills (PMBs)**.

- The **first Bill** will amend legislation relating to national and provincial governments. This PMB will amend the Electoral Act.
- The **second Bill** will amend legislation relating to local governments. This PMB will amend the Local Government: Municipal Structures Act.
- The **third Bill** will seek to amend the Constitution to regulate the frequency in which Motions of No Confidence may be brought, and to extend the time permitted in which to form a government.

### **The 5 action points are:**

1. Create an electoral threshold at all levels of government, of 1% to 2% (pending consultations with other political parties) to prevent smaller parties from gaining seats

who do not enjoy a large enough confidence from the voters and potentially could cause instability for their own personal gain. This will be done through both PMBs.

2. Codifying binding coalition agreements. This will be done through both PMBs.
3. The creation of a Political Registrar who will be the secretariat of the coalition agreement; publicise it; publicise agreement negotiations and hold the parties to account against the agreed to principles. This will be done through both PMBs.
4. Extend the time in which a Local Government has to appoint its mayor from the current time period. This will be done through the second PMB.
5. Investigate the possibility of a potential 3<sup>rd</sup> PMB creating a limitation on the frequency in which a motion of no confidence can be brought. This Bill will also extend the time in which Parliament and provincial legislatures must form a government.

## Issues Facing Coalitions

### Electoral Thresholds

The ability of small parties to act as ‘king makers’, thereby wielding a disproportionate amount of power over a coalition compared to their voter percentage, poses a significant risk to the stability of coalition governments overall. This issue currently faced in municipalities will only be exacerbated at the national level. The solution to this instability would be to impose an electoral threshold, which requires a political party to secure a pre-determined percentage of the overall vote to qualify for seats in a legislature or council. In addition, it is likely that parties which secure support above the threshold will tend to be more stable and reliable partners within a coalition government arrangement.

### Binding Coalition Agreements

Coalition governments are the future of South Africa’s political landscape. It is therefore important that coalition agreements, across all spheres of government, reflect a genuine commitment by coalition partners for multi-party government and maintenance of the agreement over the course of the term of government. To avoid unnecessary disruptions and destabilization of coalition governments, the concept of public coalition agreements should be codified. Not only should these agreements specify the varying degrees of procedures, principles and conflict resolution procedures of the coalition agreement, but they should also require that coalition partners commit to making a public commitment to honor the coalition agreements.

There is currently no legislation which regulates coalitions or provides for what is required to be inserted into a coalition agreement to make it valid. There is also no oversight body or institution which will holds and publishes these agreements, it is merely a document of

goodwill between parties at this stage in time with no actual consequences from breaching it.

## International Comparatives

The DA has looked to three different countries for inspiration for stable coalitions – Germany, Denmark and Kenya. To reduce the occurrence of political fragmentation, where a multiplicity of political parties ends up being elected into their respective legislatures, as is the case in South Africa, Germany and Denmark use an electoral threshold system which limits the prospect of small parties getting parliamentary representation. Not only does this reduce the complexity of negotiating with many small parties to form a coalition government, but it also often guarantees the stability of coalition governments.

In Africa, Kenya is an outlier in that it is the only country in the region that has codified coalition building into law through its Political Parties Act. The Act outlines a legal framework for the formation and management of coalitions. Since its enactment, it has managed to address the chaos and instability that often characterised Kenyan coalition governments before.

### Countries Compared

#### Germany

- The German electoral system uses Mixed Member Proportional (MMP) system to elect representatives to its 656 Bundestag (Parliament). Each voter has two votes. The first vote is a personal vote, given to a particular (party) candidate in one of the 328 single-member constituencies. The second vote is a party vote, given to a party list at the federal state level.
- At national level, only parties obtaining more than five percent of the votes at the federal state level, or alternatively, having three members elected directly in the single-member constituencies, are considered in the national allocation list of PR seats.
- The German system differs from pure proportional representation only in that the five percent threshold at national level excludes very small parties from parliamentary representation.
- The number of representatives from each party that has passed the legal threshold is calculated according to the Hare formula<sup>1</sup>. Seats are then allocated within the 16 federal states.
- A coalition steering group, comprising party leaders, parliamentary whips as main participants and party appointees to government, is tasked with the overall management of the coalition agreement. Consisting of an equal number of

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<sup>1</sup> The Hare quota is the oldest and simplest of the quotas: it is simply the total number of valid votes divided by the number of seats at stake in a constituency. The denominator is the number of seats contested. The Droop quota divides the total number of votes by the number of seats plus 1.

representatives from each of the coalition partners involved, the steering committee meets on a monthly or even weekly basis.

- Over the last five decades in Germany, manufactured majorities have never occurred. Majority governments have usually been coalition governments, and any change of government has resulted from changes in the configuration of the coalition.
- Despite intense political competition among political parties, the premature break up of coalition governments is rare in Germany.

## Denmark

- Denmark's electoral system uses the party-list proportional representation system to elect representatives to its 179-member unicameral national parliament. Members of Parliament are elected by open list proportional representation in ten multi-member constituencies to serve four-year terms. An additional four members are selected from Faroe Islands and Greenland
- There are two kinds of seats in Danish parliamentary elections: constituency seats (allotted to the ten constituencies) and compensatory seats.
- A political party must win at least 2 % of the vote in a general election to secure a seat in the Danish Parliament.
- Over the last decade, an average of 8 political parties have had representation in Parliament in each electoral cycle. The Denmark system of negative parliamentarism, where Government may never have a majority against it in Parliament, has resulted in more minority governments for the Danish since 1913.
- The worst form of criticism for any Danish party in a coalition is to be accused or blamed for wanting to break a political accord (coalition agreement)<sup>2</sup>.

## Kenya

- Coalition governments/agreements in Kenya are governed by the Political Parties Act of 2007. Before the Act came into force, coalitions that existed before were often wracked with wrangles and never achieved what they had aimed to. This was partly because internal rules were not clearly defined or adhered to.
- The Political Parties Act outlines a legal framework for formation and management of coalitions. It also requires political parties in a coalition to draft clear internal rules and objectives so that ordinary Kenyans can understand what to expect from the coalition between parties. A coalition entered into between political parties is governed by a written agreement deposited with the Registrar of Political Parties. According to the Act, political parties may sign coalition agreements before elections or after elections. The requirements for coalition agreement are set out in the Third Schedule of the Act.
- A coalition agreement can be amended and must follow the Act provisions for coalition agreement and the provisions spelt out in the original coalition agreement. A coalition may end by following the provisions spelt out in the coalition agreement.

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<sup>2</sup> Intra-Party Conflict and Coalitional Behaviour in Denmark and Norway: The Case of 'Highly Institutionalized' Parties - [https://tidsskrift.dk/scandinavian\\_political\\_studies/article/download/32743/30935?inline=1](https://tidsskrift.dk/scandinavian_political_studies/article/download/32743/30935?inline=1)

## Solutions

### **The DA's 5-point action step to ensure stable coalition governments**

#### **1. Electoral Thresholds**

A 1% to 2% electoral threshold (pending consultations with other political parties and broader society) be implemented at national, provincial and local governments. This will be done by amending the Electoral Act Schedule 1A and the Local Government: Municipal Structures Act, Schedules 1 and 2.

It is important to note that the Constitution specifies that elections must result, in general, in proportional representation. The exclusion of minor parties under the percentage threshold will not affect the rule of general proportionality as the vast majority of voters will still have their chosen representatives elected.

#### **2. Codifying Coalition Agreements**

South Africa can learn from Kenya where political parties who negotiate to enter into a coalition government are required, by Kenya's Political Parties Act of 2007, to deposit their written political agreement with the Registrar of political parties.

#### **3. Formation of an independent Registrar of Political Parties**

In entrenching public accountability in coalition governments, South Africa can benefit from the Kenyan concept which include:

- An independent Registrar of political parties.
- A Political Parties Disputes Tribunal to address any disputes that may arise during the lifespan of the coalition agreement.

South Africa could adapt the concept of the Registrar of political parties by requiring that it acts as a secretariat to administer coalition agreements and ensure that coalition partners commit, to the fullest extent possible, towards the maintenance of the coalition agreement

The DA will seek representations from outside, interested parties on how best to achieve the creation of a Registrar of political parties and will consult extensively with industry experts in order to achieve the objects of these private members bills.

#### **4. Extension of time periods to elect a government**

The DA will seek to extend the time allowed for a government to be elected. The purpose of this is to allow coalition partners further time to properly negotiate binding coalitions.

#### **5. Motions of No Confidence**

The DA will investigate, in consultation with other parties and broader society, the limiting of the frequency in which motions of no confidence can be brought within a legislature. This will be bearing in mind the *Mazibuko v Sisulu* Constitutional Court case and the provisions of the Constitution which may need to change. This will give the governing coalition an opportunity to govern without having to worry about the threat of being removed.

## **Notable Events: Electoral Amendment Bill, 2022**

A material event to consider is that the Electoral Amendment Bill, 2022 is currently before the Portfolio Committee on Home Affairs in the National Assembly after the Constitutional Court ruled that the Electoral Act was unconstitutional as it did not provide for the inclusion of independent candidates. This Bill is currently still being deliberated and there is no clear indication of when the Bill will pass.

Accordingly, the DA's first private members bill will be introduced only once these amendments have been finalised so that there is legal certainty as to what can and will be amended. However, there is nothing that is prohibiting the second private members bill from being introduced and this will be done in the normal time frames.

## **Consultations with Other Parties**

The DA intends to make these proposed interventions for stable coalitions a multi-party initiative by consulting all the parties represented in the national assembly. We believe that every political party in Parliament, unless they hold contrary views, is committed to having stable coalition governments.

There is abundant evidence to show that the victims of unstable coalition governments are South Africans, who are forced to contend with disruptions to service delivery. In view of the aforementioned, the DA will be reaching out to other parties for the purposes of finding common ground on the proposed legislative initiative for stable coalition governments.

This is an opportunity for everyone to put the interests of the South Africans first and work towards building functional governments in instances where coalition governments become necessary. It is important to emphasize that the DA does not have the intention of curtailing

representation but to ensure the most stable coalition governments after the 2024 elections. It is for this reason that the DA seeks to gain as much public and political party participation on how best to achieve this goal.

## Conclusion

It is clear that the current way coalitions operate is troublesome. If we are looking to countries that run successful coalitions, and wish to reproduce these results in South Africa, then we need to have the accompanying legislation that will assist in the creation of successful, stable coalitions.

Based on the issues described, and comparative countries investigated, the crucial amendments to our electoral system that need to be made are to:

1. Create an electoral threshold at all levels of government to prevent smaller parties from gaining seats who do not enjoy a large enough confidence from the voters and potentially could cause instability for their own personal gain.
  2. Codify binding coalition agreements.
  3. Create a Political Registrar who will be the secretariat of the coalition agreement; publicise it; publicise its negotiations and essentially hold the parties to account against the agreed to principles.
  4. Extend the time allowed for a government to be elected. The purpose of this is to allow coalition partners further time to properly negotiate binding coalitions.
  5. Investigate the possibility of putting a limitation on the frequency in which a motion of no confidence can be brought.
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